

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE SUBSTANTIAL)
DEVELOPMENT AND CONDITIONAL USE PERMIT)
DENIED BY GRAYS HARBOR COUNTY TO)
JOHN E. PERSSON.)

JOHN E. PERSSON,)

Appellant)

v.)

GRAYS HARBOR COUNTY AND STATE OF)
WASHINGTON, DEPARTMENT OF ECOLOGY,)

Respondents)

SHB No. 86-12

FINAL FINDINGS OF
FACT, CONCLUSIONS
OF LAW AND ORDER

This matter, the request for review of the denial of a shoreline substantial development and conditional use permit by Grays Harbor County to John Persson, came on for hearing before the Shorelines Hearings Board, Lawrence J. Faulk, Chairman, Wick Dufford, Rodney Kerslake and Nancy Burnett, Members, convened at Montesono, Washington on October 2, 1986. Administrative Appeals Judge William A. Harrison presided.

Appellant appeared by his attorney, Thomas A. Copland. Respondent
Grays Harbor County appeared by Jennifer L. Wieland, Deputy
Prosecuting Attorney. Respondent, State of Washington, Department of
Ecology, did not appear. Reporter Cheri L. Davidson recorded the
proceedings. Witnesses were sworn and testified. Exhibits were
examined. From testimony heard and exhibits examined, the SHORELINES
HEARINGS BOARD makes these

FINDINGS OF FACT

I

This matter arises in Grays Harbor County on the Wynoochee River.

II

At the site in question, the River has shifted dramatically away
from its prior course. The present main channel is some 1300 feet
northeast of an overflow channel which, in 1972, was the main channel.
The bar between these channels is the site at issue.

III

On December 26, 1985, appellant John E. Persson applied to Grays
Harbor County for a shoreline substantial development and conditional
use permit. The proposed development consisted of "scalping" gravel
from the river bar. Sand and gravel material would be removed from
the bar to a maximum depth of 6 feet over an area some 200 feet wide
by 600 feet long. This would yield 6,500 cubic yards of material. In
addition, appellant proposed to remove gravel from each of three

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER
SHB No. 86-12

connected "ponds" with the intent of securing 141,000 additional cubic yards of material and improving fish habitat.

IV

The material, once excavated, would be trucked from the bar via a bridge over the overflow channel. The bridge would be made from an old railroad flat-car, which would be supported in part, by a small amount of fill (85 cuic yards) placed upon the bar. A road would be graded from a nearby highway to the bridge and across it, onto the bar. The bridge crossing of the overflow channel would be substantially screened by the dense trees and brush growing in the area.

V

Respondent, Grays Harbor County, issued a declaration of nonsignificance for the proposed road, bridge and gravel scalping. Subsequent to this, appellant withdrew the three fish ponds from the proposal leaving only the 6500 cubic yards for removal. This is the proposal now at issue.

VI

On March 14, 1986, the County denied Mr. Persson's permit application. On April 14, 1986 the Board received the Appeal requesting review of that denial.

VII

The proposed gravel scalping may slow down the further lateral erosion of the River. However, this proposal alone is unlikely to affect either River erosion or fish habitat significantly.

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER
SHB No. 86-12

VIII

The County's denial was based in large part upon concern for the cumulative effect of many proposals of this kind at different locations on the River. About 5,000 cubic yards of gravel comes down the River each year. By contrast, about ten times that amount is harvested each year, and that has been the case for twenty years. The net effect is that the river bed is being lowered at the rate of 1/10 foot per year. There is no evidence on this record, however, that such a gradual lowering of the riverbed has any adverse effects. Indeed, the County has commenced a study to evaluate the effects of gravel scalping.

While this study is being completed the County has adopted an interim policy that:

Gravel permits will continue to be issued on the merits of the applications submitted. 1

IX

In this matter the County has cited six portions of its Grays Harbor County Shoreline Master Program (GHCSMB) in support of its denial. These are:

- 1) "Preserve the natural character of the shorelines.", which is a policy applicable to shorelines of statewide significance, such as this portion of the Wynoochee. Policy 2(b), p.24.

1
Resolution 86-23 amending the Grays Harbor County Shoreline Master Program effective July 3, 1986

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER
SHB No. 86-12

1 2) "All construction should be designed to protect the
2 adjacent shorelands against erosion, uncontrolled drainage,
3 slides, pollution, excessive excavations and fills, and
4 other factors detrimental to the environment." Policy 6
5 (b), p. 13.

6 3) Structures in riverine flood plain areas shall "comply
7 with the construction and site preparation requirements
8 contained in the document 'Flood Proofing Regulations'
9 published by the United States Corps of Army Engineers in
10 June, 1972,..." Chapter 14, pp. 42-43.

11 4) The "cumulative impacts" criterion of the
12 standard for conditonal uses which states:

13 In the granting of all conditional use
permits, consideration shall be given to the
14 cumulative impact of additional requests for
like actions in the area. For example, if
15 conditional use permits were granted for other
developments in the area where similar
16 circumstances exist, the total of the
conditonal uses should also remain consistent
17 with the policies of RCW 90.58.020 and should
not produce substantial adverse effects to the
18 shoreline environment. WAC 173-14-140

19
20 5) "All applications for Substantial Development Permits
21 must be evaluated for possible detrimental effects on scenic
22 views and visas. Chapter 18, p.45
23
24
25

1 X

2 Any Conclusion of Law which is deemed a Finding of Fact is hereby
3 adopted as such. From these Findings of Fact, the Board comes to these

4 CONCLUSIONS OF LAW

5 I

6 The site in question is designated "Conservancy" by the Grays
7 Harbor County Shorelines Master Program (GHCSMP). The road and bridge
8 at issue are therefore permitted uses, subject to compliance with
9 GHCSMP policies and regulations. The gravel scalping at issue is a
10 conditional use in the conservancy environment. GHCSMP Chapter 22,
11 p.49.

12 II

13 The removal of the 6,500 cubic yards of sand and gravel being
proposed is a minimal, man-made intrusion which is consistent with
15 GHCSMP Policy 2(b), p. 24 requiring preservation of the natural
16 character of the shorelines.

17 III

18 The gravel removal is not likely to aggravate the natural erosion
19 caused by the River, nor does it involve excessive excavation. The
20 bridge fill is not excessive. The proposed development is consistent
21 with GHCSMP Policy 6 (b), p.13.

22
23
24
25
26 FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER
SHB No. 86-12

IV

The railroad flat-car bridge and supporting fill would be within the floodplain of the River at a site where it flows swiftly and can change course rapidly. The paramount concern in floodplain regulations, such as GHCSMP, Chapter 14, ps. 42-42, is that structures neither sustain damage, nor do damage by breaking loose, nor hinder the passing floodwaters. If left indefinitely, the bridge and fill in this case could do all of those things. However, these concerns would be alleviated and the proposal rendered consistent with the cited floodplain provision if the bridge were removed and the fill leveled within the same summer as they were first placed in position.

V

The evidence establishes that gravel scalping from the river bars, such as here, results in a cumulative impact when these and many similar projects are viewed together. However, the impact has been shown to be of an unknown kind. There is no cumulative effect, now known, which renders this proposal inconsistent with WAC 173-14-140 relating to conditional uses. This conclusion, however, may not be drawn in future cases depending upon the outcome of the study which Grays Harbor County is now in the process of completing or other future evidence.

VI

The proposed gravel extraction would not be substantially detrimental to the view of the River. The bridge and supporting fill would be screened from casual observation, and likewise would not be substantially detrimental to the view. The proposal is consistent with GHCSMP chapter 18, p.45.

VII

A shoreline substantial development and conditional use permit should be issued to appellant with the following conditions which are necessary to conform the proposed development to the GHCSMP and the Shoreline Management Act. Each condition is supported by the testimony and exhibits presented in these proceedings:

1. The material to be removed shall be limited to the 6500 cubic yards of sand and gravel within the limits depicted on Exhibit A-5 which is drawing number 2 of Jack W. Jasper, P.E., dated 12-28-85.

2. The bridge and fill shall be as depicted on Exhibit A-6 which is drawing number 3 of Jack W. Jasper, P.E., dated 10-1-86.

1 3. Development and operations shall occur only
2 between June 15 and September 15 of one year.

3
4 4. The bridge shall be installed and removed,
5 its supporting fill shall be both placed and
6 removed or leveled between June 15 and
7 September 15. A surety bond shall be
8 posted by appellant, in favor of Grays Harbor
9 County, guaranteeing the removal of the bridge
10 and the removal or leveling of the fill in
11 timely compliance with this condition.

12
13 5. Equipment, machinery, trucks, fuel and
14 lubricants shall be parked or stored on the
15 uplands and not on the bar. Servicing and
16 fueling of equipment shall be on the uplands
17 and not on the bar.

18
19 6. This permit is limited to the 6500 cubic
20 yards of material identified above and nothing
21 herein speaks to any request to remove more
22 material from the same river bar. Such request
23 must be made by a further Shoreline application
24 to be granted or denied upon its own merits.

VIII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enter this

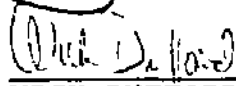
ORDER

The denial of a shoreline substantial development and
conditonal use permit by Grays Harbor County to John E. Persson is
hereby vacated and the matter remanded with instructions to issue such
a permit containing the six conditons set out at Conclusion of Law VII
hereof.


DONE at Lacy, WA this 9th day of November, 1986.

SHORELINES HEARINGS BOARD

 12/5/86
LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Lawyer Member


RODNEY KERSLAKE, Member


NANCY BURNETT, Member


WILLIAM A. HARRISON,
Administrative Appeals Judge

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER
SHB No. 86-12

CERTIFICATION OF MAILING

I, Patricia Ryan, certify that I mailed, postage prepaid, copies of the foregoing document on the 9th day of December, 1986, to each of the following-named parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Thomas A. Copland, Attorney
Copland and Micheau
P.O. Box 343
Aberdeen, WA 98520

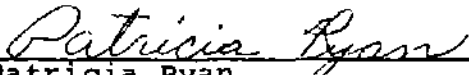
Jennifer L. Wieland
Deputy Prosecuting Attorney
Grays Harbor County
P.O. Box 550

Jay J. Manning
Assistant Attorney General
Department of Ecology
Mail Stop: PV-11
Olympia, WA 98504

Karen Beatty, Shorelands
Department of Ecology
Mail Stop: PV-11
Olympia, WA 98504

John E. Persson
Star Route, Box 626
Aberdeen, WA 98520

Tim Trohimovich
Planning Department
Grays Harbor County
P.O. Box 390
Montesano, WA 98563


Patricia Ryan
SHORELINES HEARINGS BOARD

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER
SHB No. 86-12